HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No.1208 of 2006

Between:

T. Ramesh

... Appellant

And

The Joint Collector and EO, ED,
Andhra Pradesh State Civil Supplies
Corporation Limited, Medak District
At Sangareddy and others

... Respondents

::JUDGMENT::

Counsel for the appellant: Shri B. Vijaysen Reddy

November 15, 2006

Per G.S. Singhvi, CJ

Whether the appellant is entitled to transport essential commodities under Stage II from Gajwel MLS to the door-steps of fair price shop dealers attached to the MLS Point to the exclusion of all other persons is the question which arises for determination in this appeal filed by the appellant against order dated 15-9-2006 passed by the learned Single Judge whereby she dismissed his writ petition.

The Facts:

In furtherance of the tender notice issued by Andhra Pradesh State Civil Supplies Corporation Limited (for short, 'the Corporation'), the appellant gave bid for award of contract for transportation of essential commodities from Gajwel MLS to the door-steps of fair price shop dealers for the year 2005-07. His bid was accepted by the competent authority of the Corporation and he was appointed as Stage II contractor. He then executed agreement with the Corporation, Clause (6) of which reads as under:

> "**6. VOLUME OF WORK:**
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> "The Corporation does not guarantee any volume of work any time during the period of the agreement. The mere mention of the item of work in the agreement does not itself confer any right on the contractor to demand that the entire works should necessarily or exclusively be entrusted to him. The Corporation reserves the right to appoint one or more other contractors and distribute the work among them during the currency of this agreement as its unfettered discretion in any manner that it may decide and no claim for compensation shall lie against the corporation by reason of such division of work. The decision of the corporation in this matter shall be final and binding on the contractor."

After sometime, the appellant filed writ petition under Article 226 of the Constitution of India for quashing order dated 18-4-2005 passed by Joint Collector and EO, ED, Andhra Pradesh State Civil Supplies Corporation Limited, Sangareddy, Medak (respondent No.1) whereby respondent No.5 –Gulam Dasthagiri was permitted to transport essential commodities like rice, wheat, pam oil, sugar etc. for a period of two years commencing from 1-5-2005. In paragraphs 3, 4 and 5 of his affidavit, the appellant averred as under:

> "3). I submit that while things stood thus, the respondent No. 5 was also permitted to transport essential commodities under Stage II from Gajwel MLS doorsteps of F.P. Shop dealers

attached to the MLS Point, which is the same contract being granted to me vide orders dt. 27.4.2005. On my enquiry, I came to know that the impugned order dt. 18.4.2005 in Pro No MOVT/PDS-5(1)/St-II/Beneficiaries/MDK 2005-07 passed by the 1st respondent has been issued in favour of the 5th respondent pursuant order dt. 9.3.2005 passed in W.P.No. 4541/2005. It is submitted that the impugned order is illegal, arbitrary and unconstitutional. The writ petition No. 4541/2005 is filed by the respondent No 4 along with others seeking for a direction to respondents No 1 & 2 to consider their application dt 2.2.2005 and 28.12.2004. The writ petition is filed with following prayer:

> "to consider the representation dt 2.2.2005 and 28.12.2004 in pursuance of the notice issued by the 3rd respondent in proceedings No. MOVT.PDS-5(1) Stage-II/MDK/2003-2005 dt 9.8.2004 to accept the proposal of the rates mentioned in the notice and continue the petitioners beneficiaries as Stage II Contractors, without bringing 3rd parties effecting the livelihood of the petitioners as they are unemployed and to pass such other order or orders as this Hon'ble court may deem fit and proper in the circumstances of the case."

The said writ petition was disposed with a direction to the respondents herein to consider their representation dt 2.2.2005 and 28.12.2004. The writ petition was filed without making me as party respondent. I am a proper and necessary party to writ petition. After my participation in the tender and being the lowest tenderer, I was declared as successful tenderer and I was awarded Stage II contract in pursuance of the tender notice issued in the month of December, 2004 itself. The respondent No. 5 and other petitioners in W.P.No. 4541/2005 obtained order behind my back by concealing the correct facts and by indulging in mis-representation and fraud. The 5th respondent has concealed the fact that tenders were invited for awarding transportation contract to private parties and that I was declared successful tenderer. As a matter of fact the 5th respondent has suppressed this fact also in WP

No. 4541/2005. So having participated in the tender, the 5th respondent is estopped from agitating the issue since even if any representation is made prior to tenders, the alleged claim of the 5th respondent stood waived as he has unconditionally participated in the tenders. It was not disclosed before the Hon'ble court that I stood as successful bidder in the tender and by the time order was passed in W.P.No. 4541/2005 on 9.3.2005, the application of the respondent No. 5 has become infructuous and there was nothing left consideration. I obtained contact in pursuance of valid and legal tender and the question of considering the representation of 5th respondent does not arise. Further it is relevant hereto mention that the 5th respondent did not have any vested rights for consideration of his representation.

4). It is submitted that under self-employment scheme, the government had advanced loans to the un-employed youth including the respondent No. 5 for purchasing transport vehicles. Since there were large scale defaults committed by these loanees in repayment of instalments due to the government, a policy was evolved by the govt. in the interest of these unemployed youth whereunder the govt. has decided to allot work of transportation of essential commodities to these unemployed youth by using the financed vehicles and from out of the transportation charges payable to these loanees, the govt. had been periodically deducting the amounts towards repayment of instalments towards discharge of vehicle loans. This policy was evolved by the government only as a temporary welfare measure to protect the interests of the state and as well as loanees only until vehicle loans are cleared. The loans of the 5th respondent and other petitioners in W.P.No.4541 of 2005 were discharged long back. The govt. having realized that there is good scope for participation of private transporters and also to generate revenue decided to award transport contracts by floating tenders. In pursuance of the same, I was awarded contract for transportation of essential commodities.

5. I submit that the impugned order is not only arbitrary, illegal and unconstitutional for the reasons stated supra, the impugned order is also unsustainable in the interest of the State exchequer. When I agreed to transport essential commodities at the rate of Rs.2.25 ps. per qtl. upto 8 Kms. and Rs.0.10 ps. per qtl. Beyond 8 Kms., the respondent No.5 was awarded the same @ Rs.3.58 ps. upto 8 Kms. per quintal and Rs.0.14 ps. beyond 8 kms. per quintal."

On notice, reply was filed on behalf of respondent Nos.1 to 4 in the form of the affidavit of Shri M. Balaramudu, District Manager (FAC), APSCSCL, Sangareddy. The case set up by respondent Nos.1 to 4 was that respondent No.5 is the existing beneficiary/contractor who comes under the category of beneficiary Cabstar and has been doing the work of transportation under Stage II for the last 15 years. According to respondent Nos.1 to 4, the decision to award contract to respondent No.5 was taken keeping in view the representations of Cabstar beneficiaries/contractors and the directions given by the High Court in Writ Petition No.4541 of 2005. In his affidavit, Shri M. Balaramudu averred that MLS Point, Gajwel consist of Gajwel, Mulug, Jagadevpur and Warangal Mandals and that work transportation of essential commodities under Stage II from MLS Point was being done by more than one contractors. Shri Balaramudu further averred that in order to ensure that the essential commodities reach the door-steps of the fair price shop dealers without any delay, the Corporation awarded contract to persons like respondent No.5 for supply of the essential commodities. The deponent relied on Clause 6 of the agreement and averred that after having accepted all the terms and conditions of contract, the petitioner cannot assail the decision of the Corporation to accommodate Cabstar beneficiaries/contractors. For the sake of

reference, paragraphs 8 and 9 of the affidavit of Shri Balaramudu are reproduced below:

> "8. I submit that the beneficiaries were appointed indirectly by Government of Andhra Pradesh under "Own Your Own Vehicle Scheme" which comes under Self-Employment Scheme. I submit that one person cannot undertake movement of Essential Commodities under Stage-II from MLS Point to the door steps of Fair Price Shop Dealers in view of heavy allotments under PDS/SGRY/FFW etc. I submit that there are four mandals under Gajwel MLS Point, namely Gajwel, Warangal, Jagdevpoor, Mulugu and allotments were about more than 300 trucks per month including SGRY/FFW/PDS and other schemes and therefore one person cannot handle the entire movement of Essential Commodities in time. It is relevant to submit that even earlier also 2 to 3 persons were undertaking Stage-II transportation for the last 15 years and therefore it is not a new practice to appoint one more person at Gajwel. I therefore submit that the appointment of the 5th respondent as beneficiary cabstar in addition to the petitioner cannot be said to be arbitrary or illegal. In this connection, it is pertinent to submit that 2 to 3 persons are working as Stage-II Contractors at Sadasivapet, Zaheerabad, Siddipet MLS Points also.
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> 9. I submit that as submitted above, the petitioner who was quoted lowest rates for MLS Point, Gajwel had been appointed as Stage-II Contractor by Proc. No.MOVT/PDS – 5 (1)/MDK/2005-07, dated 27-4-2005. The petitioner has accordingly entered into agreement with the District Manager, APSCSCL, Sangareddy and therefore he is bound by the terms of agreement of contract."

The learned Single Judge relied on Clause 6 of the agreement and held that the petitioner (appellant) cannot legitimately challenge the award of contract to respondent No.2. The reasons assigned by the learned Single Judge for declining relief to the appellant read as under:

"It is also clear from the counter-affidavits of the respondents that from the year 1991 onwards to contractors are transporting the essential commodities in the ratio of 50:50; one among them being the beneficiary under "Own Your Own Vehicles" Scheme. Nothing has been placed before this Court by the petitioner contradicting the said specific plea of the respondents.

As noted above, since admittedly, the agreement in favour of the 5th respondent was extended for the years 2005 and 2007 on 18-4-2005 itself, the petitioner who had entered into agreement much thereafter with the respondent Corporation voluntarily cannot now raise a dispute with regard to the work allotted to the 5th respondent. Undoubtedly, he is bound by the terms and conditions of the agreement, dated 27-4-2005 particularly clause (6) under which it was made clear that the Corporation does not guarantee any volume of work during the period of the agreement. Since the Corporation has never assured the petitioner nor it was notified in the tender notice that certain quantity would be given for transportation, the contention of the petitioner that the terms and conditions of the tender in question were altered to the disadvantage of the tenderers is unfounded and without any substance."

Shri B. Vijaysen Reddy, learned counsel for the appellant vehemently argued that the decision of the Corporation to award contract to respondent No.5 for transportation of essential commodities is, per se, arbitrary and violative of Article 14 of the Constitution and the learned Single Judge committed a serious error by refusing to nullify order dated

18-4-2005. Shri Reddy emphasized that respondent No.5 had unsuccessfully participated in the tender process and argued that the Corporation could not have favoured him by award of contract. He lamented that the learned Single Judge altogether overlooked the fact that the appellant was not party to Writ Petition No.4541 of 2005

and, therefore, the direction given by the learned Single Judge for consideration of the representations of respondent No.5 and others could not have been implemented to the prejudice of the appellant.

We have given serious thought to the arguments of the learned counsel. In our opinion, the learned Single Judge did not commit any error by refusing to entertain the appellant's prayer for quashing the action of the Corporation to award contract to respondent No.5 for transportation of essential commodities. In his affidavit, Shri Balaramudu categorically averred that respondent No.5 was doing the work of transportation under Stage II for the last 15 years and he fell in the category of beneficiary Cabstar. The learned Single Judge took cognizance of the rival pleadings and concluded that the policy decision taken by the Corporation to allow the persons like respondent No.5, who was an unemployed youth, to undertake the work of transportation of essential commodities cannot be termed as arbitrary. We entirely agree with her. The policy evolved by the government was intended to benefit unemployed youth who had taken loan for purchasing transport vehicles, but could not repay the amount due to the financial institutions. It was, therefore, decided to provide them some source of income generation so that they could discharge their obligation. If the policy of the Corporation is viewed in the backdrop of Clause 6 of the agreement entered into between the appellant and the Corporation, it is impossible to find any fault with the award of contract to respondent No.5.

It is neither the pleaded case of the appellant nor he had prayed for striking down Clause 6 of the agreement. Therefore, he has no locus to question the discretion exercised by the Corporation to appoint more contractors for distribution of essential commodities.

Before concluding, we may mention that order dated

9-1-2006 passed by the Supreme Court in Special Leave to Appeal (Civil) .. CC 12581 of 2005 – **T. Ramesh v. Gulam Dasthagiri & ors.**, whereby the observations made by the Division Bench of this Court in Writ Appeal No.1442 of 2005 were stayed, did not in any manner affect the right of the Corporation to allot work to respondent No.5.

In the result, the appeal is dismissed.

As a sequel to dismissal of the appeal, WAMP No.2506 of 2006 filed by the appellant for interim relief is also dismissed.

G.S. SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

November 15, 2006

svs